IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

OP.No. 32733 of 2000(V)

PETITIONERS:

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1) MOHAN ABRAHAM, VAHANAT HOUSE, DEVALOKAM P.O., KOTTAYAM.

2) MERCY CHACKO, SRAMBIKAL MILLS, VADAVATHOOR P.O., KOTTAYAM.

3) M.M.THAMBI, MANATHARA HOUSE, MANNANAM P.O., KOTTAYAM.

BY ADV. SRI.MATHEW JOHN (K)
SRI.BABY THOMAS

RESPONDENT:

THE TAHSILDAR, KOTTAYAM.

BY GOVT. PLEADER SRI.TEKCHAND. V.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.55833 OF 2000 IN OP.NO.32733 OF 2000-V.

DISMISSED.

02-11-2007. **Sd/- T.R.Ramachandran Nair, Judge.**

APPENDIX

Petitioners' Exhibits:-

Ext.P1: **Copy of the partnership deed dtd.1-3-1995.**

Ext.P2: **Copy of the agreement for sale.**

Ext.P3: **Copy of the agreement for construction.**

Ext.P4:- **Copy of the reply by the petitioners.**

Ext.P5:- **Copy of the reply dated 18-10-2000 by the 1st petitioner.**

Ext.P6:- **Copy of the notice of Demand dated 30-10-2000 by the respondent.**

Respondent's Exhibits:- **Nil.**

(true copy)

P.A. TO JUDGE.

kvs/-

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.32733 of 2000-V.

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Dated this the 2nd day of November, 2007.

J U D G M E N T

The substantial challenge in the Original Petition is against Ext.P6. The short facts are:

The petitioners jointly owned 40.250 cents of property in R.S.Nos.12 and 13 of Block No.18 of Muttambalam Village. Subsequently they obtained a building permit on 2/6/1996 from the Kottayam Municipality for the construction of 26 apartments for 26 persons. It is averred that the contract for construction work was entrusted to a partnership firm M/s.Classic Builders. The petitioners, it appears, had executed separate agreements with different persons for getting the apartments constructed for 1/26 individual shares in the property in question. Exts.P2 and P3 represents such agreements. At the time when the Original Petition was filed, out of the 26 apartments 15 have already been completed and 11 apartments were yet to be

completed. It is also stated that the allottees have filed separate returns before the respondent herein under the Kerala Building Tax Act, 1975.

2. While so, the petitioner was directed to file the return to which petitioner replied as per Ext.P4. The liability to pay building tax was disputed by the petitioner. The apparent case pleaded is that the 26 apartments cannot be assessed by considering it as one and each one of the apartments has to be assessed as a separate unit and that they are owned by separate persons. Finally the authority passed an assessment order based on which Ext.P6 notice was issued to the petitioner whereby he was informed that an amount of Rs.6,48,600/- has been assessed as the tax payable. By order dated 27.11.2000 an interim stay was granted by this Court in CMP.No.55833/2000.

3. Heard the learned counsel for the petitioners and the learned Government Pleader for the respondent.

4. The learned Government Pleader, on instructions, submitted that the agreements with the allottees are after the completion of the construction and in spite of giving an opportunity for production of records the petitioner did not produce them also. In the light of the view I propose to take, I am not deciding the matter on

merits.

5. Section 2(e) and Explanation 2 therein are the relevant provisions concerning the matter. The procedure to be followed in respect of assessment of tax in such cases has been laid down by a recent judgment of this Court reported in *Bavasons Constructions (P) Ltd. v. State of Kerala* (2007(3) KLT 101). The relevant portion para.9 is reproduced below:

> **"9. The petitioners-builders shall produce materials before the concerned Tahsildars regarding the allotment of individual flats to the respective owners. They shall also produce the agreements entered into with the owners of flats and also evidence to show that the payments were made by the allottees from time to time to foot the bills for the construction. They shall produce their books of accounts and bank statements. They shall also produce the deeds, assigning the undivided interest in the property. They shall produce those materials before the concerned Tahsildars before 30/04/2007. If those materials are produced to show that the construction of the flats is covered by Explanation 2 to S.2(3) of the Building Tax Act, then, the assessments shall be made separately. The assessing authorities shall consider the claim relating to each flat and render a separate speaking decision with reference to each flat. A common order can be passed for each residential complex. But, in that order, there should be separate finding regarding each flat/apartment. In case any flat is remaining unallotted, the assessment in respect of such flat shall be made, treating the builder as the owner. In case, in relation to a particular flat, sufficient**

> **materials are not produced to support the claim for the benefit of Explanation 2 to S.2(e), then also, the assessment shall be made, treating the builder as the owner of the apartment. While making separate assessments of the flats, the common area shall also be divided on *pro rata* basis, so that the entire built up area of the building is assessed to building tax. The petitioners shall also furnish the correct addresses, as far as possible, of the allottees of the flats, to the assessing authorities. The assessing authorities shall afford an opportunity of being heard to the petitioners-builders and the individual flat owners and pass final orders in the matter, as far as possible, before 30/07/2007. They shall, as stated earlier, deal with the assessment relating to every flat/apartment separately, with reference to the documents produced. In this context, it is apposite to remind the assessing authorities, the powers conferred on them under S.17 of the Act."**

There are other decisions of this Court also regarding the procedure to be complied with. [See - *Tharu v. Tahsildar* (2003(1) KLT 219)].

6. Therefore, the assessment order leading to Ext.P6 and consequently Ext.P6 are quashed. The assessing authority will reconsider the matter after issuing notice to the petitioner and also the apartment owners. The respondent will finalise the same within a period of five months from the date of receipt of a copy of this judgment.

7. As regards the allottees of different apartments, the

petitioner will furnish the details to the respondent for enabling him to issue notice to them also. The interim order passed by this Court will continue till orders are passed and communicated to the petitioner.

The Original Petition is allowed as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-